

Examiner's belief that Fig. 3 introduces new matter in showing a plurality of cavities which the Examiner continues to assert are in a specific configuration. Previously the Examiner's attention has been drawn to specific support contained in Applicants' disclosure at least at page 6. The Office Action, on page 4, in a Response to Arguments continues to assert that "[w]hile the specification discloses a plurality of cavities, the drawing contains new matter in that a specific number of cavities are shown, i.e., three, and a specific configuration of the cavities is depicted." This argument continues to set forth the same bases for objection to the drawings that has been enumerated previously throughout prosecution. Applicants have, on multiple occasions, addressed this specific assertion indicating, in pertinent part, that "[t]hese drawings (1) were provided in response to an objection raised under 37 C.F.R. §1.83 in a previous Office Action, and (2) meet the requirements of 37 C.F.R. §1.83. These drawings are not submitted to overcome any insufficiency of the specification due to lack of enabling disclosure, or otherwise inadequate disclosure therein, or in any attempt to supplement the original disclosure for the purpose of interpretation of the scope of any claim in violation of 37 C.F.R. §1.81(c)."

Applicants believe that they have fully complied with the rules and the law regarding the drawings. Applicants reassert that Fig. 3 is not intended to depict any specific configuration of any of the depicted features beyond that which is supported by the specification and the claims, as originally filed. Applicants' assertions in this regard, thereby disclaiming any specific configuration to the plurality of cavities that may be inappropriately implied based on the inclusion of Fig. 3, have not been addressed in this application to date. Further, the Office Action wholly misrepresents any discussion undertaken between Applicants' representative and the Examiner regarding the ongoing objection to Fig. 3. Specifically, Applicants' representative has requested assistance of the Examiner's expertise in indicating how Applicants may respond to the drawing correction that was required by the

Patent Office in support of the feature recited in claim 6 while not being considered to introduce new matter based on the totality of the disclosure and the language of the claims, as originally filed. In one telephone conversation, as Applicants' previous responses have indicated, Examiner Casler specifically indicated that the cancellation of claims 4-8 would obviate any new matter objection to the figures. The assertion in the Office Action, at page 4, that "during at least one telephone conversation between the examiner and applicant's attorney, it was suggest [sic] that applicant could either cancel figure 3 and claim 6 or applicant could file a continuation-in-part," misrepresents any assistance that the Examiners believe that they provided to Applicants' representative. Specifically, there has never been any discussion throughout prosecution of this application regarding any filing of, for example, a continuation-in-part application.

Withdrawal of the objection to the drawings based on the totality of the discussion above, supplementing arguments that have been set forth previously during prosecution of this application, is respectfully requested.

## **II. The Claims Define Patentable Subject Matter**

The Office Action, on page 3, rejects claims 1-3, 5, 8 and 10 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,945,050 to Sanford et al. (hereinafter "Sanford"). The Office Action, also on page 3, rejects claim 6 under 35 U.S.C. §103(a) as being unpatentable over Sanford. These rejections are respectfully traversed.

As was indicated in Applicants' June 13, 2006 Request for Reconsideration, Sanford does not teach, nor would it reasonably have suggested, the feature of a "resistant barrier which ensures a good propagation of the shock wave," as is positively recited in claim 1. The previous Office Action, as well as this Office Action fail in their attempt to address a barrier ensuring a good propagation of a shock wave. Such physical property propels the active principle using a completely distinct physical mechanism from any disclosed in Sanford.

In response to Applicants having made arguments previously that Sanford cannot reasonably be considered to teach or even to have suggested the combination of all of the features positively recited in independent claim 1, the current Office Action in its Response to Arguments on page 5, indicates that the barrier (50) of Sanford ensures good propagation of a shock wave in the fact that the particles are released from the barrier. Applicants previously argued specifically that Sanford is not intended to allow the shock wave to propagate, i.e., travel through, the barrier. In response to this argument, the Office Action indicates that the inclusion in Applicants' arguments of the term "travel through it" is not language used in claim 1. Rather, the term "propagate" is broad and must be interpreted as such minus some additional claim language or further definition in the specification. The response to Applicants' arguments regarding the inability of Sanford to anticipate the subject matter of at least independent claim 1 fails for at least the following reasons.

First, the Office Action alleges that the discharge means 55 corresponds to a shock wave generating device. There is nothing in the disclosure of Sanford that can reasonably be considered to explicitly disclose that the discharge means generates a shock wave. As such, the Office Action must rely on a theory of inherency in finding the discharge means 55 of Sanford which is alternatively described as "for example an explosive charge or compressed gas source," as corresponding to a shock wave generator. As explained in MPEP §706.02, "a reference used under 35 U.S.C. §102 must teach every aspect of the claimed invention either explicitly or impliedly. Any feature not directly taught must be inherently present." MPEP §2112 states that the Patent Office must provide rationale or evidence tending to show inherency. Citing *In Re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 150-51 (Fed. Cir. 1990), MPEP §2112 states, "[i]nherency ... may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient." Additionally, citing *Ex Parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App.

& Inter. 1990), §2112 states, "[i]n relying upon the theory of inherency, the Examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art" (emphasis in original).

Such has not been shown throughout prosecution of this application. Specifically, at least at col. 11, Sanford positively discloses "[t]he exit velocity of the air blast from the accelerator was estimated to be below about 600 feet per second," and in col. 12, "a high mass projectile (a lead pellet) was accelerated to approximately 600 feet per second by conventional means (a commercial pellet gun)," describing Fig. 8 as "[a] scale up design of an apparatus employing this principle." At least because 600 feet per second corresponds to approximately 400 miles per hour, the disclosure of Sanford cannot reasonably be read to inherently disclose that the discharge means 55 generates a shock wave. Shock wave generation does not "necessarily" flow from any disclosure of Sanford. Addressing specifically the physical principle that is the subject matter of the pending claims, and more specifically shock wave generation, Applicants' disclosure at page 5, for example, describes such shock wave as necessary for the shaping of the active principle into a streamlined jet, likened to detonation of explosive charges known as "hollow charges" that make it possible to obtain streamlined shards at high speed. At, for example, page 5, lines 19 and 20, Applicants' disclosure discusses propulsion speeds on the order of 600 to 1,000 meters per second as entirely sufficient to prevent an injection through the epidermis. There is nothing in Sanford that can reasonably be considered to teach that the apparatus shown in Fig. 8, and specifically element 55, generates a shock wave.

Second, Applicants' disclosure discusses the fixed barrier that is the subject matter of the pending claims as having a plane shock wave produced on an upstream face, the plane shock wave propagating through this barrier and violently ejecting the active principle from

each of the cavities where it was arranged (see at least Applicants' disclosure at page 4, lines 11-16). Applicants' disclosure, therefore, adequately describes the propagation phenomena that is the subject matter of the pending claims with respect to the resistant barrier. As such, Applicants do not assert that such limitation should be read into the claims, but do contend that the Examiner's interpretation of the term "propagate" is overly broad in light of reasonable definitions of the term, as well as the further definition provided in Applicants' specification.

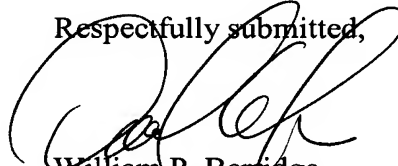
It is for at least the above reasons that Applicants believe that Sanford cannot reasonably be relied upon to teach, or even to have suggested, at least the features of a propelling system including a shock wave generator device, and a resistant barrier which ensures a good propagation of the shock wave, as are positively recited, among other features, in independent claim 1. For at least these reasons, Applicants respectfully submit that Sanford cannot reasonably be considered to teach, or to have suggested, the combination of all of the features positively recited in independent claim 1. Further, claims 2, 3, 5, 6, 8 and 10 are also neither taught, nor would they have been suggested, by Sanford for at least the respective dependence of these claims directly or indirectly on an allowable base claim, as well as for the separately patentable subject matter that each of these claims recites.

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In view of the foregoing, Applicants respectfully submit that this application is in condition for allowance. Favorable reconsideration and prompt allowance of claims 1-3, 5, 6, 8 and 10, in addition to the indicated allowability of claims 4, 9 and 12, are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact Applicants' undersigned representative at the telephone number set forth below.

Respectfully submitted,



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